

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Villaraigosa Analyst: Jeani Brent Bill Number: AB 1080

Related Bills: See Prior Analysis Telephone: 845-3410 Amended Date: May 28, 1999

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Community Development Corporation Contributions Credit

- X DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended April 28, 1999.
- X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.
- \_\_\_\_\_ FURTHER AMENDMENTS NECESSARY.
- \_\_\_\_\_ DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- X REMAINDER OF PREVIOUS ANALYSES OF BILL AS INTRODUCED February 25, 1999 AND AMENDED April 28, 1999, STILL APPLY.
- \_\_\_\_\_ OTHER - See comments below.

### SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a credit for 50% of the amount contributed to an eligible community development corporation.

The Revenue and Taxation Code provisions relating to the insurance gross premium tax credit is not administered by the department and, therefore, is not discussed in this analysis.

### SUMMARY OF AMENDMENT

The May 28, 1999, amendments reduced the annual aggregate community investment tax credit that may be allocated by the committee from \$50 million to \$30 million. The amendments also included a sunset date of January 1, 2008, to correspond to the repeal date of December 1, 2008, for the credit.

The May 19, 1999, amendments increased the annual aggregate credit that may be allocated to one taxpayer from \$250,000 to \$500,000. The May 19, 1999, amendments also extended the repeal date from 2005 to 2008 and accepted the technical amendments proposed in the department's analysis of the bill as amended April 28, 1999.

Except for the above discussion, the technical considerations, and the revenue estimate, the department's analyses of the bill as introduced February 25, 1999, and amended April 28, 1999, still apply. The department's implementation concerns still apply and are provided below.

### Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> X PENDING

Department/Legislative Director Date

**Johnnie Lou Rosas** **6/17/1999**

IMPLEMENTATION CONSIDERATIONS

This bill raises the following implementation considerations:

1. In the case of a contribution for facility support, the fact that the committee awards a credit certification would not necessarily mean that the contributing taxpayer may claim that credit. The issue arises because the committee would not provide the contributing taxpayer with the certificate, but rather would provide the voucher to the eligible community development corporation, which then would provide the certificate to the taxpayer only upon the initiation of construction. Thus, the committee may award credit certificates and the taxpayer may make the contribution, but the corporation may choose not to initiate construction immediately or not at all. This also leaves unclear whether contributing taxpayers could claim the credit in the year other than in that in which the contribution was made since a certificate could not be provided in the year of contribution if construction has not begun. Moreover, since the provision of the bill that disallows a deduction for amounts contributed for which this credit is allowed applies only to "expenses paid or incurred for the taxable year," if the contribution were delayed until a future year when construction is initiated, then the disallowance provision might not apply and taxpayers would be allowed a charitable contribution deduction in the year of contribution and a full 50% credit in a future year.
2. The bill leaves unclear what would happen to credit certificates awarded to eligible corporations in one year, but not provided to taxpayers in that year or future years. It is unclear if the corporation could provide the certificate to a taxpayer in the next year.
3. The definition of "low-income geographic area" refers to adjustment "from time to time" by the U.S. Census Bureau. It is unclear whether the reference regarding adjustment is to the geographic area or the median income.
4. This bill leaves unclear whether the \$30 million annual aggregate allocation limitation applies to all three credits (PITL, B&CTL, and gross premiums tax) collectively or individually, since the provision states "pursuant to this," thereby leaving unclear to what "this" refers. Further, this bill leaves unclear whether any unallocated credit from a prior year could be added to the total amount allocable for all projects in the next year.
5. Subdivision (k) appears to ensure that taxpayers who wish to contribute more than the \$500,000 annual maximum would not be precluded from so doing by the fact that no credit would be allowed for any excess credit. However, the subdivision is unclear and could be misinterpreted and should be clarified.
6. This bill would not require the taxpayer to retain the credit certificate to demonstrate the taxpayer's eligibility for the credit. Without this certification, it may be difficult for the department to verify whether the taxpayer is allowed the credit and the amount of the allowable credit.
7. Generally when credits are allocated by a government entity, the credit provisions require that government entity to provide the department with an annual list of taxpayers to whom the credit was allocated. This bill would not require the committee to provide an annual list to the department.

Since the credit would be allocated to community development corporations for ultimate distribution to taxpayers upon receipt of contributions, it is unclear whether the committee would ever have sufficient information to provide a listing to the department.

8. It is unclear how the phrase "controlled by" is intended to be interpreted in referring to the ineligibility of any community development corporation that is established or controlled by a taxpayer seeking a credit under this section. For this purpose, "control" could refer to either a tax law definition of control (sometimes more than 50% and other times more than 80%), or whether a lesser or non-tax law standard is intended (such as might exist where three unrelated corporations jointly establish and funnel contributions to a CDC).

#### REVENUE ESTIMATE

The May 28, 1999, amendments decreased the maximum aggregate credit that may be allocated annually from \$50 million to \$30 million, while the May 19 amendments increased the amount that may be allocated to one taxpayer from \$250,000 to \$500,000. Order of magnitude revenue losses as estimated for the bill as amended April 28, 1999, are increased from \$3 million to \$4 million in 2001-02, from \$8 million to \$9 million in 2001-02 and remain the same at \$13 million in 2002-03. Estimates do not include any losses attributable to insurance tax law.

Estimated Revenue Impact of AB 1080 As Amended 5/28/99 [\$ In <b>Millions</b> ]			
1999-00	2000-01	2001-02	2002-03
minor loss	-\$4	-\$9	-\$13

Minor loss is less than \$500,000. The bill would be effective with income/taxable years beginning on or after January 1, 2000.

Based on prior experience for the low-income housing credit, revenue losses from applied tax credits for the initial years would be significantly less than authorized allocations.

Reducing the aggregate credit allocated annually to \$30 million does not significantly reduce previous estimates in the initial years. It is likely that projected taxpayer contributions in the initial years would be much the same, irrespective of a cap amount in excess of \$15 million. Therefore, credits in the initial years would be allocated and applied at roughly the same magnitude as previously estimated. The impact of the reduction in the annual cap would become more pronounced in later years.

Increasing the total credit that could be allocated to any one taxpayer in any year from \$250,000 to \$500,000 increases the estimated revenue impact because some taxpayer likely would contribute in excess of \$250,000.

#### BOARD POSITION

Pending.